

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 97-153-E - ORDER NO. 97-916  
OCTOBER 24, 1997

*✓ ml*

IN RE: Blue Ridge Electric Cooperative, Inc.,	)	ORDER
	)	DENYING
Petitioner,	)	PETITION
	)	
vs.	)	
	)	
Duke Power Company,	)	
	)	
Respondent.	)	
	)	
	)	

---

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration and/or Rehearing filed by Duke Power Company (Duke) of our Order No. 97-819 in this Docket, which granted the relief requested by Blue Ridge Electric Cooperative, Inc. (Blue Ridge or the Coop.) Our Order required Duke to cease and desist from attempting to provide power to the Nason Corporation.

Duke requested reconsideration of this Order, alleging certain factual errors and failure to address Duke's argument. We have re-examined the matter, and conclude that the findings in our Order No. 97-819 are in accordance with South Carolina law and are supported by a preponderance of credible, reliable, and substantial evidence. We will elaborate in the paragraphs that

follow.

First, Duke alleges that we are in error in finding that S.C. Code Ann. Section 58-27-610(3) and S.C. Code Ann. Section 58-27-620(1)(d)(iii) do not provide authority for Duke to serve the Nason premises. We reject this contention. The substantial evidence of record shows that Duke constructed the 44kv "Darby" line in 1969, which served no distribution customers. (See Testimony of Mark Johnson.) The 44kv line currently in existence, the "Bear Swamp" line, was constructed in 1974. (See testimonies of Mark Johnson and Barney Drake.) The Nason premises are not located wholly within 300 feet from either line. (See Ex. A-I and A-II to Duke's Response to Blue Ridge's Petition.) The "Darby" line was not a distribution line, and therefore conveyed no service rights within Blue Ridge assigned territory. The "Bear Swamp" line was constructed after July 1, 1969, and would therefore convey no corridor rights, regardless of its function. Further, the Nason plant is not located wholly within 300 feet of either line, and SC Code Ann. Section 58-27-610(3) only extends corridor rights from distribution lines with respect to premises located wholly within 300 feet from such a line. We reaffirm our earlier holding that the Code sections cited do not provide authority for Duke to serve the Nason premises.

Second, Duke contends that we did not correctly interpret the evidence in the record regarding construction of the 44 kv "Darby" line, 100 kv line, and 44 kv "Bear Swamp" lines. We reject this allegation, since it is without merit.

The evidence at the hearing showed that the 44 kv "Darby" transmission line which was constructed in 1969 was upgraded to a 100 kv transmission line in 1974, and that there has been no 44 kv line on the original towers constructed in 1969 since that time. (See testimony of Johnson, Drake, affidavit and testimony of Connell, and Ex. A-I and A-II to Duke's Response to Blue Ridge's Petition.) While there may have been wire strung continuously on the 1969 towers, it ceased carrying electricity at 44 kv in 1974. The testimony clearly showed that a new 44 kv "Bear Swamp" transmission line was constructed in 1974, that it is not the same line as the 44 kv "Darby" transmission line, and was therefore not a mere renaming as Duke alleges.

Further, we correctly found that the 44 kv "Bear Swamp" line serves as a transmission tie line. Duke's witness, Mark Johnson, provided an affidavit to the Commission stating that the "Bear Swamp" line originally served as a transmission tie line from its construction in 1974 until it began serving the Steel Heddle plant in 1981. The affidavit further stated that this line also currently serves as a back up transmission tie line to the Walhalla station. Further, the photograph at Exhibit 2 to the prefiled testimony of Barney Drake shows a Duke sign on the Duke pole on the Walhalla side of the tap feeding Steel Heddle which states: "Bear Swamp Line, Walhalla Tie Side Steel Heddle Tap." Thus, our finding is supported by evidence in the record.

In addition, Duke alleges that we erred in finding that Duke would construct a new line to serve the Nason plant. This is not

the case. As Duke points out in its Response, it was uncontroverted that it would not serve the Nason plant off of its existing 44 kv "Bear Swamp" transmission line, but that it would be more economical to construct another line to serve the plant. Duke alleged in part that this 44 kv line was a "distribution" line. As such, the character of this line as distribution or transmission was directly put at issue by Duke. That it would be uneconomical to serve a distribution customer off of a purported "distribution" line is directly relevant to the character of the line. Further, the Territorial Assignment Act was designed and enacted by the General Assembly to avoid exactly this type of wasteful duplication, and the issue above is directly relevant in the Commission's construction of the provisions of the Act.

Next, Duke states that the Commission incorrectly found that the 44 kv line is a transmission line. Again, we disagree. The reliable and substantial evidence in the record as set forth above was that the 44 kv "Darby" line, constructed in 1969, never served any distribution customers. Further, the evidence showed that the 44 kv "Bear Swamp" line constructed in 1974 did not serve any distribution customers until it began service to the Steel Heddle plant in 1981, pursuant to the 750 kw load provisions. During the hearing, Duke's witnesses were unable to name any distribution customers originally served off of the 44 kv "Bear Swamp" line. In fact, the testimony was that the Duke witness was unaware of any line built as a distribution line where no distribution customers were served off of the line for a period of 12 years.

(See testimony of Johnson.) The evidence also showed that the 44 kv "Darby" line and the 44 kv "Bear Swamp" lines originally served as transmission tie lines to the Walhalla tie Station, and that the 44 kv "Bear Swamp" line still serves as a back-up transmission line. (See Affidavit of Mark Johnson.) S.C. Code Ann. Section 58-27-610(3) and our Regulation 103-304 require that the Commission look to the primary purpose of the line at the time it was constructed to determine its character as transmission or distribution. Our finding was therefore clearly supported by the evidence of record.

Duke states that our earlier Order failed to address all of its claims, including its corridor rights under S.C. Code Section 58-27-630 and the 1972 Order issued by us. We believe that we correctly found that no corridor rights resulted from the Code section and the Order.

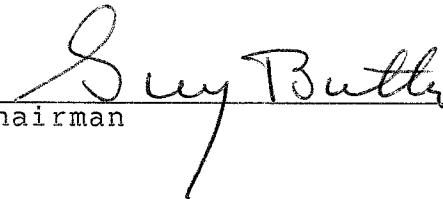
Duke further alleges that this Commission was incorrect in finding that the 44 kv "Darby" line no longer exists. Again, we disagree. The evidence in the record as set forth above was that the 44 kv "Darby" line was replaced by a 100 kv line. A second 44 kv line, the "Bear Swamp" line, was constructed on poles separate from the poles on which the "Darby" line was placed. There was no testimony that the 44 kv "Darby" line currently operates at 44 kv on the towers constructed in 1969. Our finding in this regard is supported by the reliable, probative, and substantial evidence of record.

Lastly, Duke states that the Commission was in error, in that


it disregarded the 1972 Order, and in interpreting its own prior Order. Duke presented the argument to the Commission that the Commission in its 1972 Order left a 600 foot swath of unassigned territory in the middle of Blue Ridge assigned territory. It is uncontroverted that there is no evidence in the record that this was the agreement or intent of the parties. Further, Exhibit A to the 1972 Order, which is a map, showing the areas of territorial assignment, do not show by markings or otherwise that this area is unassigned. In fact, Exhibit A shows the territory in this area as assigned to Blue Ridge. The 1972 Order was a form Order used by the Commission state-wide in its adjudications pursuant to the Territorial Assignment Act. The language cited by Duke merely tracks the language of the Territorial Assignment Act, and does not give Duke any rights or privileges beyond that within the Act. In fact, Duke's interpretation is in direct conflict with the provisions of the Act, which establishes in detail how areas within 300 feet from an electric supplier's lines may be serviced. Duke's contentions that the Commission intended or attempted to replace these provisions is certainly not reasonable, nor is it supported by Exhibit A. The Commission is not prevented by res judicata, collateral estoppel, or estoppel by judgment from interpreting its own orders, nor was the Commission's decision in this matter made upon unlawful procedure. Thus, this last contention by Duke is without merit.

Having found that the allegations of Duke's Petition are without merit, we hereby deny said Petition. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy Executive Director  
(SEAL)